



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 12, 2006

**MEMORANDUM**

TO: The Commission

THROUGH: Patrina M. Clark  
Staff Director

FROM: Lawrence H. Norton  
General Counsel

Rosemary C. Smith  
Associate General Counsel

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SUBJECT: Amendments to Draft Advisory Opinion 2006-22 (Wallace for Congress)

The Office of General Counsel proposes to amend Agenda Document No. 06-60 (draft Advisory Opinion 2006-22 (Wallace for Congress)), as described below. The amendments correct and add certain legal citations and supplement the description of regulatory and statutory changes, as requested.

1. On page 6, lines 19-20, replace "2 USC 431(8)(A)" with "2 U.S.C. 431(8)(A)(ii)".
2. On page 7, line 2, delete "(1980)" from the citation and insert "Title I, § 101, Jan. 8, 1980," after "Pub. L. No. 96-187,".

3. Insert a footnote on page 7, line 3, after the sentence ending with “to reflect the amended statute.” The text of the footnote is as follows:

Advisory Opinion 1980-4 was issued on February 1, 1980. The amended regulation, which is also the current regulation, became effective on April 1, 1980, and appeared at 11 CFR 100.7(a)(3). *See* 45 Fed. Reg. 21211 (Apr. 1, 1980). The Commission re-numbered the regulation as 11 CFR 100.54 after enactment of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002). *See* 67 Fed. Reg. 50582, 50586-7 (Aug. 5, 2002).

4. Move the quotation mark appearing before “the” on page 7, line 12, to before “payment” on page 7, line 13.
5. On page 7, line 13, replace the “of” appearing after “payment” with “by”.
6. On page 7, line 13, replace “which” with “if those services”.
7. Move “without charge” on page 7, line 14, from after “political committee” to after “rendered”.

Attachment

1 In Advisory Opinion 1980-4 (Carter/Mondale Presidential Committee), on which you  
2 rely in your request, the Commission applied a previous version of 11 CFR 100.54 (11 CFR  
3 100.4(a)(5) (1977)). Although the relevant definition of “contribution” in the Act (2 USC  
4 431(8)(A)(ii)) was amended in early 1980 to include compensation paid by one person for  
5 personal services of another that are rendered to a political committee without charge “for any  
6 purpose,” *see* Pub. L. No. 96-187, Title I, § 101, Jan. 8, 1980, 93 Stat. 1339, the Commission had  
7 not yet amended its regulations to reflect the amended statute.<sup>7</sup> Accordingly, in Advisory  
8 Opinion 1980-4 the Commission stated that “Commission regulations indicate that contributions  
9 in the form of compensation occur when the compensated services consist of ‘political activity,’  
10 *i.e.*, services engaged in for the purposes of influencing an election to Federal office.” The  
11 Commission concluded that a contribution did not result in Advisory Opinion 1980-4 because  
12 the compensation paid for legal services that enabled the political committee in question to  
13 present a defense to a complaint alleging violations outside the purview of the Act, as  
14 distinguished from permitting compensated personnel to engage in the political committee's  
15 political activities.

16 The Commission’s conclusion here, by contrast, rests on the implementation of the Act as  
17 reflected in current Commission regulations, which specify that a contribution results from the  
18 “payment by any person of compensation for the personal services of another person if those  
19 services are rendered without charge to a political committee *for any purpose*.” 11 CFR 100.54  
20 (emphasis added). The Commission need not and does not address whether the legal services  
21 described by the requestor are “for the purpose of influencing the election of any person to

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<sup>7</sup> Advisory Opinion 1980-4 was issued on February 1, 1980. The amended regulation, which is also the current regulation, became effective on April 1, 1980, and appeared at 11 CFR 100.7(a)(3). *See* 45 Fed. Reg. 21211 (Apr. 1, 1980). The Commission re-numbered the regulation as 11 CFR 100.54 after enactment of the Bipartisan

- 1 Federal office.” Due to material differences between the previous and current understanding of
- 2 the Act and between the versions of Commission regulations, the Commission determines that
- 3 Advisory Opinion 1980-4 does not apply here.

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Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002). *See* 67 Fed. Reg. 50582, 50586-7 (Aug. 5, 2002).